

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ALFRED A. CARTER)	
Claimant)	
VS.)	
)	Docket No. 186,563
WALT KEELER COMPANY)	
Respondent)	
AND)	
)	
AETNA LIFE & CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

On February 4, 1997, the application of respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark dated July 22, 1996, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, Ray Hodge of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, David M. Druten of Kansas City, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) The nature and extent of claimant's injury and/or disability.
- (2) The amount of compensation due.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. With the exception of the calculation discussed below, the findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issues raised.

Respondent objects to the Award wherein the Administrative Law Judge awarded claimant a 39 percent whole body functional impairment. The Administrative Law Judge, in adopting the medical opinion of Dr. Jace W. Hyder found that Dr. Hyder, as the treating physician, had more knowledge as to claimant's problems than the evaluating physician, Dr. John W. Weigel. In reviewing the medical testimony, the Appeals Board agrees Dr. Hyder's opinion appears to be based on facts developed during his analysis and treatment of claimant. Dr. Hyder was involved in the surgeries, diagnosis, and treatment of claimant for a period of several years. The Appeals Board does note that Dr. Hyder, in using the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised), rated claimant with a series of impairment ratings but did not calculate claimant's whole body impairment when considering all the damaged parts. The Administrative Law Judge, in reviewing Dr. Hyder's testimony, apparently added mathematically the various functional impairment ratings in reaching a 39 percent whole body functional impairment. The Appeals Board, in utilizing the combined values chart found in the Guides notes that the combined functional impairments of the claimant compute to a 35 percent functional impairment to the body as a whole rather than the 39 percent originally awarded. This recalculation does not alter the ratings of Dr. Hyder although it does result in a lower percentage of whole body impairment than that originally awarded. In all other respects the award of the Administrative Law Judge is affirmed insofar as it is not in contradiction to the opinions expressed herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark, dated July 22, 1996, is modified as corrected, and the claimant, Alfred A. Carter, is granted an award against the respondent, Walt Keeler Company, and its insurance carrier, Aetna Life & Casualty Company, for an accidental injury sustained on April 26, 1992, for a 35% whole body permanent partial disability.

Claimant is entitled to 37.29 weeks temporary total disability compensation at the rate of \$289 per week totaling \$10,776.81, followed by 377.71 weeks compensation at the rate of \$120.09 per week in the sum of \$45,359.19, for a total award of \$56,136.00.

As of February 26, 1997, there would be due and owing to claimant 37.29 weeks temporary total disability compensation at the rate of \$289 per week in the sum of

\$10,776.81, followed by 215.14 weeks permanent partial disability compensation at the rate of \$120.09 per week totaling \$25,836.16 for a total due and owing of \$36,612.97, which is ordered paid in one lump sum minus amounts previously paid. Thereafter, the remaining balance in the amount of \$19,523.03 shall be paid at the rate of \$120.09 per week for 162.57 weeks until fully paid or until further order of the Director.

The fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Ireland Court Reporting	
Transcript of regular hearing	\$168.03
Deposition of Shirley Carter	96.48
Deposition of Jace W. Hyder, M.D.	328.80
 Deposition Services	
Deposition of Lawana S. Wallace	234.00
 Metropolitan Court Reporters, Inc.	
Deposition of John W. Weigel, M.D.	303.50
 Barber & Associates	
Transcript of preliminary hearing	138.20

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Ray Hodge, Wichita, KS
David M. Druten, Kansas City, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director